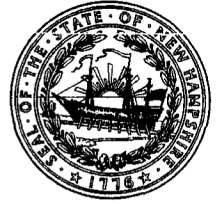




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 3, 2005

Evans Group, Inc.
Attn: Douglas R. Evans
PO Box 246
Lebanon, NH 03766-0246

Re: Docket No. AF 04-098 Motion to Accept Settlement Agreement

Dear Mr. Evans:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on May 3, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Sclafani,
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Thomas Beaulieu, DES WMD
Tammy Calligandes, DES WMD

Evans Group, Inc.
Attn: Douglas R. Evans
P.O. Box 246
Lebanon, NH 03766-0246

Re: Evans Expressmart, Route 103, Warner, NH
UST ID # 0-110335

**ADMINISTRATIVE FINE
No. AF 04-098**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Evans Group Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Evans Group, Inc., ("Evans") is the registered facility owner of three underground storage tank ("UST") systems at the Evans Expressmart facility ("the Facility"), further identified as UST # 0-110335, located on real property at Route 103, Warner, NH ("the Property").
3. On December 9, 2004, the Division issued Notice of Proposed Administrative Fine and No. AF 04-098 ("the Notice") to Evans seeking fines totaling \$1,900 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Evans for violating Env-Wm 1401.18(f) (9) by failing to provide DES with a closure report for tanks 4 and 5. Pursuant to Env-C 607.06(e) the Division sought a fine of \$500.
5. The Notice further cited Evans for violating Env-Wm 1401.25(c) and (e) by failing to provide the minimum 5-gallon capacity for the spill containment devices for tanks 8 and 9 and by failing to install adequate overfill protection equipment on tank 9. Pursuant to Env-C 607.05(j) the Division sought a fine of \$400.
6. The Notice further cited Evans for violating Env-Wm 1401.31(a) by failing to conduct the leak monitor's annual test for proper operation. Pursuant to Env-C 607.05(d) the Division sought a fine of \$1,000.
7. In order to settle this matter, the Division and Evans have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.
8. Of the proposed fine, in the amount of \$1,900, 20% or \$380 shall be suspended due to the Respondent's cooperation in returning the facility to a compliance status. An additional 20% or

\$380 shall be suspended due to the Respondent's history of compliance at this facility. An additional 20% or \$380 shall be suspended due to the Respondent's consistent cooperation in providing information and correcting the violations.

9. The suspended portion of the proposed fine, in the amount of \$1,140 is contingent upon Evans maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document. If Evans fails to maintain compliance during the two-year period, the suspended portion of the fine in the amount of \$1,140 shall become immediately due and payable. If Evans maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

10. Evans agrees to pay the remaining \$760 upon execution of this agreement by Evans.

11. Payment under Paragraph #10 and any payment that becomes due pursuant to Paragraph #9 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

12. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

13. By executing this Agreement, Evans waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.


14. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Evans, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

15. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.


WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,
Evans Group, Inc.


4-5-05
Date

COPY

Mr. Douglas R. Evans
Duly Authorized

4/27/05
Date

DES Waste Management Division
COPY

Anthony Giunta, Director

This Motion to Accept Settlement agreement is granted this 3rd day of MAY, 2005.

COPY

Michael P. Nolin, Commissioner
Department of Environmental Services